

DEPUTY PUBLIC PROSECUTOR

v.

DOLLAH BIN AZIZ

and

DEPUTY PUBLIC PROSECUTOR

v.

TAY CHIN CHYE.

[App. Crim. Juris. (Murray-Aynsley, C.J.)

August 2, 1950]

[Singapore — Magistrate's Appeals Nos. 68 and 93
of 1950]

Road Traffic Ordinance—Charge of exceeding speed limit—Whether it is necessary to prove accuracy of instruments used.

These appeals were brought by the Deputy Public Prosecutor against acquittals by Magistrates on charges of exceeding the speed limits. At the trial, the Magistrates had held that it was necessary for the prosecution to prove that the instruments used in assessing the speed of the vehicle, were accurate.

Held, (1) that the degree of proof in cases of exceeding the speed limit is the same as in other criminal cases; (2) that if the Court is satisfied that the prosecution has been honestly conducted and that the tests have been conducted with reasonable competence, it is open to the Court to convict on the strength of evidence of observations made with instruments without evidence of the accuracy of those instruments.

Cases referred to:—

- (1) *Melhuish v. Morris* (1938) 4 All E.R. 98.
- (2) *Nicholas v. Penny* "Times" of May 10, 1950.

MAGISTRATE'S APPEALS.

A. D. Farrell (D.P.P.) in person.

N. L. Macassey for the respondents.

Murray-Aynsley, C.J.:—These are appeals by the Deputy Public Prosecutor against acquittals by Magistrates on charges of exceeding the speed limits.

The learned Deputy Public Prosecutor seeks clarification on the question of proof in these cases. The particular question is proof of accuracy of instruments used by the police for measuring speed. Actually in both these cases other questions arise; so it is not possible to reach a decision by deciding this particular point. So I have taken the course of dismissing the appeals. I hope, however, to clarify certain matters for the benefit of magistrates.

The first observation is that the prosecution has to prove its case in these matters in the same way as in any other, neither more nor less. An excessive scepticism on the part of those who have to decide these cases may result in defeating the ends of justice just as much as excessive credulity. In the first place the Court must be satisfied that the prosecution has been honestly conducted and that the tests have been conducted with reasonable competence.

Once satisfied on this point the Court should remember that the means available to the police do not render it possible to determine the speed of a vehicle with any high degree of accuracy. If the police calculations show only a slight excess of speed the offence has not been proved. I think that a good working rule would be to expect a probable error of about 15

per cent. Once this is accepted Magistrates need not worry unduly about the accuracy of instruments used. The more important inaccuracies arise from the fallibility of human beings rather than that of instruments.

In the present case of Dollah the test was taken with stop-watches over 220 yards. At 30 miles per hour this distance would be covered in 15 seconds. A very indifferent stop-watch might show an error of one-tenth second in this time. Measuring the distance might, if rather carelessly done, show an error of one per cent. The most serious errors would arise in starting and stopping the watches.

The other case is one where the timing was done by observation of the speedometer of another vehicle moving as closely as possible to the same speed as the vehicle under observation. In this case there must be considered not only the error of the instrument but also some error in reading and further error arising from failure to maintain exactly the same speed as that of the vehicle followed.

It should be remembered that in all measurements there is some degree of error. What is important is to know the probable degree of error. In this sort of case it is out of place to expect laboratory standards or even the standards attained in timing athletic events.

In these matters Magistrates must rely on common sense and section 115 of the Evidence Ordinance.

Common observation shows that yard measures ordinarily sold are about a yard long and a stop-watch by a reputable maker gives approximately the right time. The speedometer ordinarily fitted to a car is not a very accurate instrument, but, with the margins I have indicated above, is usually sufficiently accurate for the purpose.

Confusion has arisen from the English case of *Melhuish v. Morris*⁽¹⁾ which decided that where evidence of a speedometer-reading was given, evidence of the accuracy of the speedometer must be given. Owing to the technicalities of the law of evidence it is not usually possible to give evidence of tests of the accuracy of an instrument without introducing hearsay. The case in question was not followed in the recent case of *Nicholas v. Penny*⁽²⁾ at present only reported in the "Times" Newspaper of May 10, 1950. *Melhuish v. Morris* should, in consequence, be disregarded by Courts in this Colony.

The present position is, therefore, that it is open to Courts to convict on the strength of evidence of observations made with instruments without evidence of the accuracy of those instruments. If the defence wish to challenge the accuracy of the instruments used they should do so in cross-examination. This will usually bring out the fact that tests have been made if that is the case.

Appeals dismissed.